

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S BRIEF  
AND  
APPENDIX**





# 77-2071

*To be submitted*

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## United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-2071

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ANTONIO REYES,

*Petitioner-Appellant,*

—v.—

UNITED STATES OF AMERICA.

*Respondent-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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### BRIEF AND APPENDIX FOR THE UNITED STATES OF AMERICA

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## TABLE OF CONTENTS

|                                                                                     | PAGE |
|-------------------------------------------------------------------------------------|------|
| Preliminary Statement .....                                                         | 1    |
| Statement of Facts .....                                                            | 2    |
| 1. The Suppression Hearing and the Facts Underlying Reyes' Conviction .....         | 2    |
| 2. The Present Petition .....                                                       | 3    |
| ARGUMENT:                                                                           |      |
| The District Court Properly Denied Reyes' Motion Pursuant to 28 U.S.C. § 2255 ..... | 5    |
| CONCLUSION .....                                                                    | 10   |

### TABLE OF CASES

|                                                                                                                                                           |      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| <i>Dalli v. United States</i> , 491 F.2d 758 (2d Cir. 1974) ..                                                                                            | 5, 7 |
| <i>Davis v. United States</i> , 411 U.S. 233 (1973) .....                                                                                                 | 8    |
| <i>Fontaine v. United States</i> , 411 U.S. 213 (1973) ....                                                                                               | 5    |
| <i>Kaufman v. United States</i> , 394 U.S. 217 (1969) ....                                                                                                | 8    |
| <i>Li Puma v. Commissioner</i> , 560 F.2d 84 (2d Cir. 1977) .....                                                                                         | 9    |
| <i>Machibroda v. United States</i> , 368 U.S. 487 (1962) ..                                                                                               | 10   |
| <i>Mirra v. United States</i> , 255 F. Supp. 570 (S.D.N.Y. 1966), <i>aff'd</i> , 379 F.2d 782 (2d Cir.), <i>cert. denied</i> , 389 U.S. 1022 (1967) ..... | 7    |
| <i>Newfield v. United States</i> , Dkt. No. 77-2036, slip op. 99 (2d Cir., October 19, 1977) .....                                                        | 7    |
| <i>Rickenbecker v. Warden</i> , 550 F.2d 62 (2d Cir. 1976) .....                                                                                          | 9    |
| <i>Sanders v. United States</i> , 373 U.S. 1 (1963) .....                                                                                                 | 10   |



|                                                                                                                | PAGE |
|----------------------------------------------------------------------------------------------------------------|------|
| <i>United States v. Bubar</i> , Dkt. No. 76-1140, slip op. 4519 (2d Cir., June 30, 1977) .....                 | 9    |
| <i>United States v. Franzese</i> , 525 F.2d 27 (2d Cir. 1975), <i>cert. denied</i> , 424 U.S. 921 (1976) ..... | 10   |
| <i>United States v. Reyes</i> , Dkt. No. 75-1216 (2d Cir. September 17, 1975) .....                            | 2, 3 |
| <i>United States v. Reyes</i> , Dkt. No. 75-1403 (2d Cir. 1975) .....                                          | 2    |
| <i>United States v. Tolliver</i> , Dkt. Nos. 77-1017, 2055, slip op. 863 (2d Cir., January 3, 1978) .....      | 10   |
| <i>United States v. Taylor</i> , 562 F.2d 1345 (2d Cir. 1977) .....                                            | 9    |
| <i>United States v. West</i> , 494 F.2d 1314 (2d Cir.), <i>cert. denied</i> , 419 U.S. 899 (1974) .....        | 8    |
| <i>United States v. Wight</i> , 176 F.2d 376 (2d Cir. 1949), <i>cert. denied</i> , 338 U.S. 950 (1950) .....   | 9    |
| <i>Zovluck v. United States</i> , 448 F.2d 339 (2d Cir. 1971), <i>cert. denied</i> , 405 U.S. 1043 (1972) .... | 8    |

**United States Court of Appeals  
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ANTONIO REYES,  
*Petitioner-Appellant,*

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UNITED STATES OF AMERICA,  
*Respondent-Appellee.*

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**BRIEF FOR THE UNITED STATES OF AMERICA**

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**Preliminary Statement**

Antonio Reyes appeals from an order of the Honorable Charles L. Brieant, Jr., United States District Judge, entered on May 25, 1977, in the United States District Court for the Southern District of New York, denying, without a hearing, Reyes' motion for post-conviction relief pursuant to Title 28, United States Code, Section 2255.

Indictment 74 Cr. 382, filed on April 11, 1974, charged Antonio Reyes and six other defendants with various violations of the federal narcotics laws.\*

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\* The other defendants named in the Indictment were Ricardo Quiles, Victor Soto, Hector Soto, Santiago Medina, Joseph Caccida, and Brunilda Rodriguez. Reyes was charged in Count One with participating in a narcotics conspiracy from June 1, 1973 until April 11, 1974, and in Counts Two and Three with actual distributions of heroin.

Following a four-day suppression hearing in 1974 before Judge Brieant, trial as to Reyes and Brunilda Rodriguez commenced on May 6, 1975, before the district judge and a jury, and concluded on May 9, 1975, when the jury found Reyes guilty on all three counts in which he had been charged.

On June 6, 1975, Judge Brieant sentenced Reyes to concurrent terms of imprisonment of twelve years, imprisonment on each count to be followed by a three year period of special parole. On appeal from Reyes' conviction this Court affirmed with an oral opinion rendered in open court. *United States v. Reyes*, Dkt. No. 75-1216 (2d Cir. September 17, 1975).

Thereafter, Reyes filed a motion pursuant to Fed. R. Crim. P. 35 for a reduction in sentence. By order dated October 28, 1975, Judge Brieant granted Reyes' motion and reduced his sentence to a term of 10 years' imprisonment. Reyes then appealed from this order and this Court affirmed the order of the District Court. *United States v. Reyes*, Dkt. No. 75-1403 (2d Cir. 1975).

Reyes presently is serving his sentence.

On May 19, 1977, Reyes filed the present motion pursuant to Title 28, United States Code, Section 2255, and sought post-conviction relief on the alleged ground that he had been unable to communicate with his counsel at trial. By endorsement order, entered on May 25, 1977, Judge Brieant denied this motion as totally without merit.

### **Statement of Facts**

#### **1. The Suppression Hearing and the Facts Underlying Reyes' Conviction**

For a complete statement of the facts underlying Reyes' 1975 conviction, the Government respectfully refers the Court to the Government's brief on the direct



appeal. *United States v. Reyes*, Dkt. No. 75-1216. Briefly summarized, the trial evidence showed that Reyes acted as a narcotics broker for two separate heroin transactions. After several introductory conversations, Reyes, for a fee, brought together willing sellers of heroin and a man named Angel Rodriguez, who, unbeknown to Reyes and his cohorts, was an undercover DEA agent. Following Reyes' arrest, on November 7, 1973, he confessed, in English, to his participation in the narcotics activity ultimately charged in the indictment.

Prior to trial Reyes moved to suppress his post-arrest statements on the ground that he did not understand English and therefore could not have knowingly and intelligently waived his constitutional rights. Judge Briant considered this claim in a lengthy suppression hearing and on February 14, 1975, denied Reyes' motion in a memorandum order. (A. 1-8).<sup>\*</sup> Judge Briant found from all of the evidence, including tape recorded conversations in English, made during the course of Reyes' deals, and the testimony at the hearing, that Reyes was sufficiently fluent in English to understand his rights and that his statements were voluntarily given.

## 2. The Present Petition

In his motion under 28 U.S.C. § 2255 Reyes contended that he was unable to speak the English language with sufficient fluency to understand the proceedings against him or to communicate effectively with and to assist his assigned counsel. Reyes' petition thus claimed that defendant was denied a fair trial in violation of his First, Fifth and Sixth Amendments rights. Reyes also claimed generally that he had been denied effective assistance of counsel. Reyes' motion was not accompanied by any affi-

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<sup>\*</sup> References to the Government's Appendix on this appeal are cited as "A. —;" "tr." refers to pages of the transcript of Reyes' 1975 trial.

davits, other than his verification of the petition, nor was any supporting document exhibited to the petition.\*

In an endorsement-order denying Reyes' petition, Judge Brieant reviewed the pre-trial and trial proceedings, including four days of suppression hearings, over which he presided. The District Court noted the adequacy of petitioner's trial counsel, the absence of any claim at trial of failure of communication due to an alleged language barrier, and the overwhelming evidence of Reyes' ability to understand the English language. (A. 9-10). With respect to this latter point, the District Court specifically referred to a tape recording, received in evidence, which illustrated Reyes' ability to speak and understand English, as well as testimonial evidence that Reyes, in the course of his transactions, responded in Spanish to questions asked of him in English, and at other times spoke fluent English. Finally, the trial court referred to its 1975 denial of Reyes' suppression motion as additional evidence of defendant's ability to understand English:

"He was interviewed in English after his arrest, without difficulty by Agent Flannery, and again by an Assistant United States Attorney who speaks no Spanish. The Court's Memorandum Decision dated February 14, 1975 contains findings of fact with regard to petitioner's linguistics, which were not held clearly erroneous on his direct appeal.

Reyes' contentions here are frivolous. No evidentiary hearing is necessary. The petition is denied." (A. 9-10).

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\* Appended to the brief filed by Reyes in this Court is a copy of an uncertified one-page statement on United States Government Memorandum paper, addressed "To Whom It May Concern." This document, which states only that Reyes had difficulty with reading in English as reflected by his problems with one standardized test, never was presented to the District Court and of course is not properly before this Court.



## ARGUMENT

### **The District Court Properly Denied Reyes' Motion Pursuant to 28 U.S.C. § 2255.**

Almost two years after his jury-trial conviction for narcotics offenses, Reyes sought relief pursuant to Section 2255 with the claim that he lacked sufficient ability to communicate in the English language and therefore was deprived of a fair trial. In his petition for post-conviction relief, Reyes alleged that he was denied effective assistance of counsel since he could not "meaningfully converse" with his attorney, and further leveled a series of totally unsupported charges as to the adequacy of his trial counsel. Judge Brieant, who presided over Reyes' suppression hearing and trial, considered movant's conclusory allegations and found them totally unsupported in the record of the proceedings in the trial court. The District Court's denial of Reyes' motion was correct and proper since "the motion and the files and records of the case conclusively show[ed]" that Reyes was not entitled to post-conviction relief. 28 U.S.C. § 2255. See *Fontaine v. United States*, 411 U.S. 213, 215 (1973); *Dalli v. United States*, 491 F.2d 758, 760 (2d Cir. 1974).

First, with respect to Reyes' belated claim that he was unable to communicate effectively in English with his attorney, the suppression hearing and trial record clearly refute this contention. As Judge Brieant observed upon his careful review of the record, at no time during the suppression and trial proceedings which occurred in 1974 and 1975 did Reyes or his experienced trial counsel assert a failure of communication due to a language barrier. The absence of any contemporaneous suggestion of a language obstacle to attorney-client consultations makes apparent the lack of merit to Reyes' present motion. Indeed, Reyes did not even proffer in support of his motion

an affidavit from his trial counsel suggesting such a communication difficulty, nor was there any explanation offered for its absence.\*

Moreover, as summarized in Judge Brieant's endorsement order, evidence introduced at both the suppression hearing and the trial affirmatively demonstrated Reyes' adequate command of the English language. Tape recordings and testimonial evidence showed Reyes regularly conversing intelligently in English in the course of the heroin deals under advisement; Reyes' confession to his involvement in the conspiracy was given verbally in English, and after he acknowledged in English that he understood and waived his rights; and, finally, as detailed in the memorandum opinion denying his earlier suppression motion, (A. 1-8), Reyes demonstrated an unquestioned ability to understand English by responding in Spanish on recorded phone conversations to questions put to him in *English* by the undercover agent.\*\*

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\* Even if this Court considers the unsworn "To whom it may concern" memorandum attached to Reyes' appellate brief, this document does not advance defendant's claim. At best, this document states that Reyes had some difficulty with reading English, as demonstrated by his inability to take certain standardized tests. However, this purported evidence must be viewed in the context of Reyes' own admission that he understood the trial proceedings with sufficient precision to take notes of the trial testimony. (Appellant's Brief, p. 3).

\*\* Judge Brieant's February 1975 memorandum, denying Reyes' suppression motion, included the following review of this evidence:

"There apparently are tape recordings of a number of telephone conversations between Detective Rodriguez and Mr. Reyes having to do with drug transactions. One tape was introduced at the hearing (Gov't. Ex. 5) to illustrate Mr. Reyes' ability to speak and understand English. Most of the conversation consists of Detective Rodriguez asking questions in English and the defendant responding in Spanish. There are portions in which the defendant responds in English, for example, the following exchange:

[Footnote continued on following page]



Thus, in the circumstances of the District Court's earlier and timely determination with respect to Reyes' linguistic ability, there simply was no occasion to conduct a hearing in the absence of any new or specific information proffered by Reyes on his belated motion.\* *Newfield v. United States*, Dkt. No. 77-2036, slip op. 99, 107-08 (2d Cir., October 19, 1977); *Dalli v. United States*, *supra*; *Mirra v. United States*, 255 F. Supp. 570 (S.D.N.Y. 1966), *aff'd*, 379 F.2d 782 (2d Cir.), *cert. denied*, 389 U.S. 1022 (1967).

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Reyes: In the first place, before you were wasting your time, you know why?

Agent Rodriguez: Why?

Reyes: Because in the first place, I don't know you too good in the first place, right?

Agent: You check me out, right?

Reyes: Yeah, that's what I am telling you now.

Agent: You check me out?

Reyes: Yeah, but I mean . . .

Agent: I pass the test or what?

Reyes: Huh?

Agent: Do I pass the test?

Reyes: What?

Agent: You check me out anyway, right?

Reyes: Right. Besides that, in the second place, I spoke with Miriam [phonetic] yesterday, I saw Miriam and he told me, you know.

Agent: Okay, so now you trust me, right?

Reyes: Right.

Agent: Okay, that's all' (Transcribed from Gov't. Ex. 5)."  
(A. 5-6).

\* In denying Reyes' present motion Judge Brieant noted in passing that "[a]t all relevant times, petitioner had the benefit of a Spanish language interpreter." Reyes argues that the record does not show an interpreter present, although he does not specifically deny that an interpreter was available and used by him in the proceedings in the District Court. In any event, it is clear that Judge Brieant's denial of the motion was made on the basis of the ample evidence in the record that Reyes was fluent in English, and the absence of a timely claim that communication between Reyes and his counsel was a problem.



Second, aside from the lack of merit to Reyes' present motion, his failure to have raised the language barrier claim on direct appeal forecloses its assertion by a collateral attack upon his conviction. While this point was not specifically relied upon by Judge Brieant in denying Reyes' motion, defendant's failure on direct appeal to have presented the issue of his alleged inability to understand and converse in English was a deliberate bypass of an available remedy, particularly in view of the trial court's earlier suppression decision.

It is settled law that a deliberate bypass of appellate review of an existing issue bars its assertion under Section 2255, even if the claim is a constitutional one. *Kaufman v. United States*, 394 U.S. 217, 227, n.8 (1969); *United States v. West*, 494 F.2d 1314 (2d Cir.), cert. denied, 419 U.S. 899 (1974); *Zovluck v. United States*, 448 F.2d 339 (2d Cir. 1971), cert. denied, 405 U.S. 1043 (1972). See also, *Davis v. United States*, 411 U.S. 233, 239-42 (1973). Application of this principle to the case at bar is fully warranted. Since Reyes' present claim of a linguistic impediment rested solely on facts known both prior to and at the time of trial, Reyes and his trial counsel, who also represented him on appeal, were in a position to press the issue of defendant's alleged inability to comprehend and communicate adequately in English on direct appeal if either believed the issue had merit. The belated assertion of that claim now—almost two years after the trial and without explanation for its tardiness—constitutes no less than an abuse of the remedy of Section 2255. Accordingly, the District Court's denial of this aspect of Reyes' Section 2255 petition properly may rest alone on this basis. *Zovluck v. United States*, *supra*, 448 F.2d 339, at 341.

Finally, Reyes' more general claim of ineffective assistance of counsel must fail because his motion simply did not set forth any facts sufficient to demonstrate that his counsel was inadequate, let alone sufficient to meet the

stringent standard consistently applied by this Court for determining ineffective assistance of counsel. See generally, *Li Puma v. Commissioner*, 560 F.2d 84 (2d Cir. 1977); *United States v. Bubar*, Dkt. No. 76-1140, slip op. 4519 (2d Cir., June 30, 1977); *Rickenbacker v. Warden*, 550 F.2d 62 (2d Cir. 1976); *United States v. Taylor*, 562 F.2d 1345 (2d Cir. 1977); *United States v. Wight*, 176 F.2d 376 (2d Cir. 1949), *cert. denied*, 338 U.S. 950 (1950). Thus, Reyes' petition contained no more than bald and conclusory allegations of the ineffectiveness of his counsel, unaccompanied by any factual averments sufficient on their face to demonstrate that counsel's performance was so woefully inadequate as to shock the conscience of the Court and make the proceedings a farce and mockery of justice. *Li Puma v. Commissioner*, *supra*; *United States v. Bubar*, *supra*.\* On appeal, Reyes has not offered any specific allegations which undercut Judge Brieant's observations, as the presiding trial judge, that

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\* Reyes' petition generally alleged that his attorney had not adequately prepared for the defense by marshalling witnesses (whose names or proposed testimony were not provided in the petition); by consulting fully with the defendant to better examine witnesses (again, the names of whom and areas of examination were not identified in the petition); and by preparing Reyes to testify in his own behalf (although defendant did not state what would have been the substance of his testimony). Even a cursory review of the record of the suppression hearing and trial makes apparent the lack of substance to these claims, which, in any event were too general and conclusory to have required a hearing. At the suppression hearing, counsel proffered a defense by calling Reyes' wife as a witness to the circumstances of his arrest. (Transcript of Proceedings, June 28, 1974, at 131-36). Both at the hearing and at trial, assigned counsel, Lawrence Levner, effectively cross-examined the witnesses against Reyes, and put forward, as best he could, an entrapment defense—the only plausible defense even remotely available in view of the overwhelming proof against Reyes. Levner's opening remarks (Tr. 30) were sensible and effective, and were surpassed by his summation (Tr. 306 et seq.), which Judge Brieant later observed "was brilliantly given." (Tr. 384).

Reyes at all times was adequately represented by assigned counsel who vigorously protected defendant's interests. *United States v. Tolliver*, Dkt. Nos. 77-1017, 2055, slip op. 863, 877 (2d Cir., January 3, 1978); cf. *United States v. Franzese*, 525 F.2d 27 (2d Cir. 1975), *cert. denied*, 424 U.S. 921 (1976). As the presiding trial judge with an "intimate familiarity with the case," 525 F.2d at 32, Judge Brieant was in the best possible position to evaluate the performance of Reyes' trial counsel, particularly in the absence of specific factual allegations by Reyes. *United States v. Tolliver*, *supra*. Accordingly, Judge Brieant properly exercised his discretion to deny the petition without a hearing. *Sanders v. United States*, 373 U.S. 1, 20 (1963); *Machibroda v. United States*, 368 U.S. 481, 495 (1962).

### CONCLUSION

**The order of the District Court should be affirmed.**

Respectfully submitted,

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Attorney for the United States  
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Of Counsel.*



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**APPENDIX**

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**Excerpts From Opinion of Brieant, J.,  
February 14, 1975**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Cr. 382

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UNITED STATES OF AMERICA,

—against—

RICARDO QUILES, VICTOR SOTO, HECTOR SOTO, SANTIAGO  
MEDINA, ANTONIO REYES, BRUNILDA RODRIGUEZ,  
JOSEPH CACCIOLA,

*Defendants.*

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MEMORANDUM AND ORDER

[Motion to Suppress: Defendants Quiles, Reyes  
and Rodriguez]

Brieant, J.

Defendants Ricardo Quiles, Antonio Reyes and Brunilda Rodriguez, named with four others in a nine-count indictment charging conspiracy to violate, and substantive violations of, the narcotics laws (21 U.S.C. § 841, *et seq.*), move prior to trial to suppress inculpatory oral statements made by them to an Assistant United States Attorney on November 7, 1973.

An evidentiary hearing was held beginning June 28th, continued on July 9th, July 11th and July 26, 1974.

The claimed bases on which defendant Quiles moves to suppress his statement are that defendant was not advised of his *Miranda* rights, made the oral statement without knowledge of his rights, was denied counsel, and that the statement was obtained by duress.



*Excerpts From Opinion of Brieant, J., February 14, 1975*

According to defendant Rodriguez, she was intoxicated at the time the statement was given, and therefore did not understand her constitutional rights even if the *Miranda* warnings were given. Additionally, she contends, even if the *Miranda* warnings were read to her before she made her oral statement, she was too distracted to comprehend them because police officers, in the presence of the Assistant United States Attorney who was conducting the interview, threatened to take away her child unless she admitted her participation in the alleged narcotics violations.

Defendant Reyes protests that no interpreter was present at his interrogation, that Mr. Reyes understands little or no English, and therefore did not understand the *Miranda* warnings if they were read to him by the Assistant United States Attorney.

*The Law*

The question in each case is whether defendant's statements were given voluntarily and are therefore admissible, or whether defendant's will was "overborne at the time he confessed," *Lynum v. State of Illinois*, 372 U.S. 528, 534 (1963). The Court must find, by a preponderance of the evidence, that defendant's will was not overborne and the statement was the product of a rational intellect. *Jackson v. Denno*, 378 U.S. 368 (1964); *Lego v. Twomey, Warden*, 404 U.S. 477 (1972); *United States v. Silva*, 418 F.2d 328 (2d Cir. 1969); *United States v. Currier*, 405 F.2d 1039 (2d Cir. 1969), *cert. den.*, 395 U.S. 914; *United States v. Arcediano*, 371 F. Supp. 457 (D.N.J. 1974); Annotation: Voluntariness of Confession, 80 A.L.R.2d 1428.

The "totality of the circumstances" must be considered, *Boulder v. Holman*, 394 U.S. 478, 480 (1969). Among the relevant factors to be weighed are:

*Excerpts From Opinion of Brieant, J., February 14, 1975*

"age, mentality, prior criminal experience, length, intensity and frequency of interrogation, physical deprivation or mistreatment, existence of threat or inducement. . . ." *Brown v. United States*, 356 F.2d 230, 232 (10th Cir. 1966).

In each case, the Court must examine all of the facts surrounding the confession, paying particular attention to the defendant's ability to make full use of his faculties, so that the Court can answer the question [*Culombe v. Connecticut*, 367 U.S. 568, 601 (1961)]:

"Is the confession the product of an essentially free and unconstrained choice by its maker?"

*The Facts*

The investigation which led to the instant indictment was the result of efforts of the Joint Task Force, composed of representatives of the United States Drug Enforcement Administration and the New York City police force. In September and October of 1973, an undercover agent, Detective Angel Rodriguez of the New York City Police Department, made purchases of heroin from or through the defendants. As a result of these purchases, defendants were arrested on November 6, 1973.

The following day, all of the defendants were interviewed individually by Assistant United States Attorney Daniel Pykett in his office. The oral statements were written out by the Assistant United States Attorney on standard forms, USA 33s-306 (hereinafter "form 306"), signed by him and witnessed by an agent or police officer who was present during the entire interview.

At least two other defendants, Joseph Cacciola and Hector Soto, were interviewed by Mr. Pykett in addition to the three moving defendants on November 7, 1973. Mr. Pykett recalled interviewing the defendants because it was unusual for him to have five or six people to inter-



*Excerpts From Opinion of Brieant, J., February 14, 1975*

view at one time. He remembers advising defendants of their rights that day, but at the hearing, did not specifically recall their responses. His testimony was that the responses recorded on Government Exhibits 1, 2 and 4 (form 306 for defendants Quiles, Reyes and Rodriguez, respectively) were in his handwriting, written when they were given, in accordance with the practice he normally followed with respect to the 150 to 200 post-arrest processing interviews he had conducted. If an interviewee did not understand any of his or her rights as read by Mr. Pykett, his practice was to stop and explain further, and to terminate the interview immediately if an interviewee wanted an attorney (Tr. July 26, pp. 9-10).

Nothing in the record gives the Court any reason to doubt that Mr. Pykett followed his normal procedure, and I therefore find he did advise all defendants of their rights. The claims of each defendant are discussed individually below.

\* \* \* \* \*

*Defendant Antonio Reyes*

Detective Rodriguez met defendant Reyes in March or April of 1973, visited his home eight or nine times and ultimately made heroin purchases with Reyes' help. Defendant Reyes' wife confirmed that Detective Rodriguez had visited their home often, and that their conversations had been in Spanish. The number of children residing in the Reyes household at the time of Reyes' arrest is in dispute; Detective Rodriguez testified there was one son, about 3 months old; Mr. Reyes told Mr. Pykett there were three, ages 4, 3 and 8 months; Mr. Reyes' wife testified there were two, ages 4 and 1 year. Even assuming this matter may have some bearing on Detective Rodriguez' credibility, his error is not surprising since the parents themselves disagree, and both admit that Detective Rodri-



*Excerpts From Opinion of Brieant, J., February 14, 1975*

guez was a frequent visitor at their home, in an undercover capacity.

There apparently are tape recordings of a number of telephone conversations between Detective Rodriguez and Mr. Reyes having to do with drug transactions. One tape was introduced at the hearing (Gov't. Ex. 5) to illustrate Mr. Reyes' ability to speak and understand English. Most of the conversation consists of Detective Rodriguez asking questions in English and the defendant responding in Spanish. There are portions in which the defendant responds in English, for example, the following exchange:

"Reyes: In the first place, before you were wasting your time, you know why?

Agent Rodriguez: Why?

Reyes: Because in the first place, I don't know you too good in the first place, right?

Agent: You check me out, right?

Reyes: Yeah, that's what I am telling you now.

Agent: You check me out?

Reyes: Yeah, but I mean . . .

Agent: I pass the test or what?

Reyes: Huh?

Agent: Do I pass the test?

Reyes: What?

Agent: You check me out anyway, right?

Reyes: Right. Besides that, in the second place, I spoke with Miriam [phonetic] yesterday, I saw Miriam and he told me, you know.

Agent: Okay, so now you trust me, right?

Reyes: Right.

*Excerpts From Opinion of Brieant, J., February 14, 1975*

Agent: Okay, that's all." (Transcribed from Gov't. Ex. 5)

On November 6, 1973, defendant Reyes was arrested at his residence in the Bronx by Agent Flannery, with Detective Rodriguez, Detective Petraglia and various other members of the Joint Task Force. At the time of arrest, Detective Rodriguez asked Detective Petraglia for his copy of the standard *Miranda* warnings (Gov't Ex. 3), which are printed in English. Detective Rodriguez translated the warnings into Spanish and also read them in English to defendant Reyes (Tr. p. 60). As he was being driven to the Joint Task Force headquarters, defendant was advised of his rights probably three times (Tr. p. 60) and each time, Detective Rodriguez translated them into Spanish (Tr. p. 70), to comply with a police department rule that "you will read the rights to the defendant if possible in Spanish if they are Spanish and also in English." (Tr. p. 69) These multiple readings were done, Detective Rodriguez testified, because defendant Reyes did not at first believe that Detective Rodriguez, who Reyes thought was a friend, was actually an undercover agent.

Mr. Reyes' wife, Lucille Flores, testified that Detective Rodriguez was not present at the time her husband was arrested, although Agent Flannery was. She was not in the room for much of the time the agents were in the apartment, she heard only English being spoken and does not know what warnings, if any, were given to her husband because her knowledge of English allegedly is limited. It may be that Detective Rodriguez entered the apartment after the other officers and was not seen by Mr. Reyes' wife. The point is not crucial in view of Detective Rodriguez' testimony that the *Miranda* warnings were read to Mr. Reyes in Spanish as well as English more than once in the car on the way to Task Force headquarters.



*Excerpts From Opinion of Brieant, J., February 14, 1975*

Agent Flannery was also present at the interview of Mr. Reyes on November 7, 1973 and witnessed the statement at issue. His testimony is that Mr. Reyes was advised of his rights in English by Assistant United States Attorney Pykett and responded that he understood, by nodding his head and mumbling "yes" (Tr. pp. 44-45). In reply to questions about his background, Mr. Reyes told Mr. Pykett he was an addict presently in a methadone program and had six prior arrests, including one for possession of narcotics implements (Gov't Ex. 2). By his own admission, therefore, defendant is no neophyte at the arrest procedure, and undoubtedly had heard the standard *Miranda* warnings on prior occasions. It is equally probable that defendant had undergone interrogation on prior occasions and that his will would not have been overborne in the course of a nine-minute interview. As far as the testimony shows, defendant was detained overnight, without any interrogation until his interview with Mr. Pykett.

No interpreter was present at the Pykett interview (Tr. p. 42), nor did Agent Flannery hear defendant ask for one (Tr. p. 55). Detective Rodriguez was not present during the entire interview, and testified that he did not act as interpreter nor does he recall seeing an interpreter (Tr. pp. 74-75). Detective Petraglia, on the other hand, testified that he was in the room for a short time during Mr. Reyes' interview and he thought since Mr. Reyes "had a language problem," Detective Rodriguez was there acting as interpreter (Tr. p. 103). Detective Petraglia was in the room only briefly, and it is likely that his recollection of Detective Rodriguez translating the *Miranda* warnings to Mr. Reyes in Spanish pertains to the time of arrest rather than the time of the interview. As noted above, Detective Rodriguez stated that he did not act as interpreter, and Mr. Pykett and Agent Flannery, both present during the entire interview, confirm that no Spanish was spoken.



*Excerpts From Opinion of Brieant, J., February 14, 1975*

Agent Flannery does not speak Spanish. During the Pykett interview, he spoke with Mr. Reyes and asked him questions, which defendant answered, about drug traffic in the Bronx and his source of supply. All conversations were in English and Agent Flannery had no difficulty understanding the defendant (Tr. p. 56).

Subsequent to his arrest, Reyes was brought to the Joint Task Force headquarters and interviewed by Detective Rodriguez, Detective Petraglia and Supervising Agent Gary in an attempt to obtain his cooperation. Mr. Reyes refused, saying he was going to "beat the case" (Tr. p. 62). The conversation was in English.

The Court finds that Mr. Reyes was sufficiently fluent in English to understand his rights and that his statement was voluntarily given.

\* \* \*

*Conclusion*

On the basis of the foregoing findings, judged in the light of the applicable legal principles, the Court holds that the defendants voluntarily, knowingly and intelligently waived their constitutional rights and their statements were freely and voluntarily given.

Defendants' motions to suppress are in all respects denied.

SO ORDERED.

Dated: New York, New York

February 14, 1975

/s/ CHARLES L. BRIEANT, JR.

.....  
CHARLES L. BRIEANT, JR.

U. S. D. J.

**Endorsement**

77 Civ. 2477-CLB

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ANTONIO REYES,*Petitioner,*

—v.—

UNITED STATES OF AMERICA,

*Respondent.*

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The Court recalls petitioner's trial and conviction which was affirmed by the Court of Appeals. At all relevant times, petitioner had the benefit of a Spanish language interpreter. The proof of his guilt was overwhelming. Assigned counsel conducted a suppression hearing on June 28, 1974 in which counsel for co-defendants Rodriguez, Quiles and Cacciola also participated. The hearing was continued on July 9, 1974, July 11, 1974 and July 26, 1974. The motions were denied, as was a pre-trial motion to dismiss.

On May 6, 1975 petitioner and Mrs. Rodriguez went to trial before a jury, each with separate assigned counsel. Petitioner was at all times adequately represented by his assigned counsel, who projected at all times a sincere belief in his innocence. At no time was there any claim made of failure of communication due to language barrier, nor any complaint about the effectiveness of counsel. A tape received in evidence illustrated Mr. Reyes' ability to speak and understand English. Indeed, in his transactions with the undercover agent, the defendant responded in Spanish to questions asked of him in English, and at other times, appeared to speak fluent English. He was interviewed in English after his arrest, without difficulty by Agent Flannery, and again by an Assistant United States Attorney who speaks no Spanish. The Court's Memorandum Decision dated February 14, 1975 contains findings of fact with regard to petitioner's

*Endorsement*

linguistics, which were not held clearly erroneous on his direct appeal.

Reyes' contentions here are frivolous. No evidentiary hearing is necessary. The petition is denied.

So Ordered.

Dated: New York, New York  
May 24, 1977.

CHARLES L. BRIEANT  
U. S. D. J.





AFFIDAVIT OF MAILING

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

PATRICIA ANNE WILLIAMS being duly sworn,  
deposes and says that she is employed in the office of  
the United States Attorney for the Southern District  
of New York.

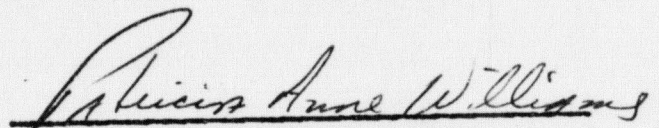
That on the 27th day of February, 1978,  
she served a copy of the within brief by placing the same  
in a properly postpaid franked envelope addressed:

ANTONIO REYES

P. O. Box 1000

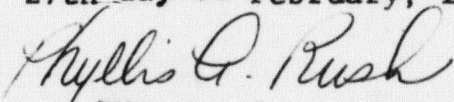
Lewisburg, Pennsylvania 17837

And deponent further says that he sealed the said envelope  
and placed the same in the mail<sup>s</sup> box for mailing at One St.  
Andrew's Plaza, Borough of Manhattan, City of New York.

  
PATRICIA ANNE WILLIAMS

Sworn to before me this

27th day of February, 1978



PHYLLIS A. RUSH  
Notary Public, State of New York  
No. 03-4635198  
Qualified in Bronx County  
Commission Expires March 30, 1978



